



## Phillips Lytle LLP

The Honorable Nina Gershon (Via ECF and Overnight Delivery)

May 17, 2022

United States District Judge

The Honorable Roanne L. Mann (Via ECF)

United States Magistrate Judge

United States District Court

for the Eastern District of New York

225 Cadman Plaza East

Brooklyn, New York 11201

Re: *Suffolk County Water Authority v. Dow Chemical Co., et al.*,  
No. 2:17-cv-6980-NG-RLM, and *Related Cases*

Dear Judge Gershon and Judge Mann:

After weeks of conferral among the 32 Parties in these 27 Related Cases, to allow for the completion of depositions that COVID delays and scheduling conflicts make difficult to complete by the dates in Your Honors' March 19, 2021 Scheduling Order, ECF 171 (Order), and to allow time to resolve any open issues related to document productions and third-party subpoenas, the Parties jointly move the Court for brief extensions to the Order's interim dates, as well as a brief extension -- from December 2, 2022 to February 14, 2023 -- to the date by which expert depositions must be completed in the SCWA case:

| Event   | Original Date     | Proposed Date     |
|---|-------------------|-------------------|
| Completion of Fact Discovery in SCWA  | June 3, 2022      | August 9, 2022    |
| Date for submissions regarding additional prioritized cases, as per the Court's 2/17/21 Scheduling Order at 2 | June 3, 2022      | August 16, 2022   |
| Affirmative expert reports due in the SCWA case   | September 2, 2022 | October 18, 2022  |
| Responsive expert reports due in the SCWA case  | November 1, 2022  | December 20, 2022 |
| Completion of expert depositions in the SCWA case   | December 2, 2022  | February 14, 2023 |

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These dates, among other things, are reflected in the Agreed Proposed Supplemental Case Scheduling Order attached as Exhibit 1. There have been no previous requests for extensions of these dates.<sup>1</sup>

Good cause exists for the requested extension. The Parties represent that, despite their best efforts, due to delays and complications caused by COVID shutdowns and delays in receipt of responsive documents from various third parties, including third-party agencies, the Parties require limited, additional time to complete certain fact discovery in the SCWA case. The Parties have served nearly 200 Subpoenas on non-parties seeking documents and/or deposition testimony. Since the Court entered the March 19, 2021 Scheduling Order, the Parties have completed the following fact discovery: (a) over 1.1 million documents totaling approximately 11 million pages have been collectively produced by approximately 100 Parties and non-parties in response to the Parties' Requests for Production and Subpoenas; and (b) depositions of 29 Party and non-party witnesses have taken place. The Parties have agreed not to notice any new party depositions in connection with fact discovery in the SCWA case without agreement or Court Order, but request a short extension of the existing dates to complete depositions, and resolve any open issues related to document productions and third-party subpoenas.

Additionally, following up on the Parties' last status report, ECF 274, at 2-3, the Parties are continuing to confer regarding multiple legal and factual issues that may affect prioritization and case management for trial.

Accordingly, the Parties respectfully request that the Court modify the March 19, 2021 Scheduling Order as follows:

| <b>Event</b>                         | <b>Proposed Date</b>  |
|--------------------------------------|-----------------------|
| Completion of Fact Discovery in SCWA | <b>August 9, 2022</b> |

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<sup>1</sup> On June 24, 2021, upon Defendants' unopposed motion, the Court amended the deadline to add third-party defendants in the Related Cases from July 16, 2021 to August 30, 2021, but left the other dates in the March 19, 2021 Scheduling Order unchanged. ECF 184.



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| <b>Event</b>  | <b>Proposed Date</b>     |
|---|--------------------------|
| By this date the Parties are to make: (i) a joint submission that identifies what the Parties have agreed to concerning (a) additional prioritized cases, as per the Court's 2/17/21 Scheduling Order at 2, and (b) any other case management and scheduling issues, including those identified in paragraph 10 of the Proposed Order attached as Exhibit 1; and (ii) simultaneous submissions by each Party that identifies the Parties' position on any areas to which agreement was not reached, and the basis for their position. | <b>August 16, 2022</b>   |
| Affirmative expert reports due in the SCWA case   | <b>October 18, 2022</b>  |
| Responsive expert reports due in the SCWA case  | <b>December 20, 2022</b> |
| Completion of expert depositions in the SCWA case   | <b>February 14, 2023</b> |

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The Parties will promptly bring to the Court any issues requiring intervention following good faith conferral, and will provide the Court with a further update in the next regularly scheduled status report on May 31, 2022.

We thank the Court for its consideration. Should the Court wish to discuss this request, the Parties are available at the Court's convenience.



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Respectfully submitted,

/s/ Joel A. Blanchet

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<sup>2</sup> The Sher Edling firm represents all Plaintiffs in these related cases except Plaintiffs New York American Water (19-cv-2150) and Hicksville Water District (19-cv-5632).



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